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TAGS: [EINV](#) [KIDE](#) [CASC](#) [PGOV](#) [BU](#)  
SUBJECT: BULGARIA: 2006 REPORT ON INVESTMENT DISPUTES AND  
EXPROPRIATION CLAIMS

REF: STATE 60294

¶1. The United States government is aware of one (1) claim of U.S. persons that may be outstanding against the Government of Bulgaria (GOB), and one claim that has been resolved.

¶2. List is keyed according to reftel instructions.

A) Claimant A (Resolved case)  
B) 2003  
C) Claimant A and the GOB Privatization Agency signed in February 2004 a sales agreement for the privatization purchase of 65 percent of Bulgarian Telecommunications Company (BTC) for 230 million Euro. The parties completed the deal through the final transfer of shares on June 11, 2004, which ended the dispute.

A) Claimant B (Ongoing case)  
B) 2000  
C) In 1999, Claimant B established a subsidiary, which purchased a controlling interest in a Bulgarian fertilizer company through the privatization process. The subsidiary was the holder of the fertilizer company shares. Shortly after the privatization, the Russian partner in the subsidiary of Claimant B, through a scheme involving a bogus loan, acquired the fertilizer company shares from the subsidiary through another Cyprus-registered holding company which he controlled.

The Russian partner -- without a power of attorney or any other authority from the claimant -- signed a loan agreement between the claimant's subsidiary (on behalf of the fertilizer company) and his separate holding company for 4 million dollars to purchase pipes. When, as expected, the fertilizer company could not repay the loan, the holding company sued and gained control over claimant's subsidiary and therefore the fertilizer company. On August 30, 2000, the Vratsa Regional Court issued a decision regulating the transfer of 9,683,000 shares of the fertilizer company from the claimant's subsidiary to the Russian partner's holding company.

Shortly after the holding company took over the shares of the fertilizer company, the Privatization Agency agreed to sell the remaining 14 percent of the shares still held by the GOB to the holding company.

The claimant has since been caught in a legal dilemma in Bulgaria between the questions of jurisdiction and reciprocity. On one hand, the Bulgarian courts claimed that they did not have jurisdiction because the case is between two American registered companies. However, when the claimant won its case before the New York Supreme Court in June 2001, Bulgaria refused to recognize the New York

court's decision because the United States and Bulgaria do not have a reciprocity agreement.

The Sofia City Court issued a decision on July 14, 2003, ordering the Cyprus-registered company to restore the above shares to the claimant. Further to an appeal submitted by the Cyprus-based company, on December 18, 2003, the Sofia Appellate Court overruled the Decision of the Sofia City Court.

Following the above Decision, the claimant submitted an appeal before the Supreme Court of Cassation (SCC), which was heard by its Commercial Division (case No. 144/2004) on June 16, 2004. This is the highest court and its decision is final for all parties concerned. A three-judge panel of the SCC upheld on September 10, 2004, the decision of the Sofia Appellate Court. On March 8, 2005, a five-judge panel of the Supreme Court of Cassation issued its final decision and turned down yet another appeal.

In the meantime, a separate case in the Vratsa District Court went forward based on the claim of the Bulgarian state natural gas company BULGARGAZ and the Bulgarian state electrical company NEC for proclamation of declaring the fertilizer company insolvent. The court declared the fertilizer company insolvent on December 14, 2004.

Despite the court ruling against the Claimant, the Post-Privatization Agency (PPA) has initiated legal proceedings against the claimant for failing to meet commitments under the privatization contract. In addition, the PPA sent, on April 11, 2005, a letter requesting the claimant pay 7.4 million dollars for non-performance under the privatization contract. Embassy asked the PPA to reconsider this in light of the Bulgarian Court's determination that claimant is not

the owner of the plant. The director of the PPA responded that she found it very unusual that the privatization agreement allowed for 100 percent of the company assets to be transferred, while all liabilities for performance under the privatization agreement stayed with the buyer (Claimant B). We relayed this information to the attorney for Claimant B with the request that they review the privatization agreement to see if this arrangement was agreed upon by the buyers of the fertilizer company at the time of privatization.

13. Claimant reference list:

Claimant A: Viva Ventures, U.S. Company

Claimant B: IBE Trade, U.S. Company

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